

2001

India's Wayward Children: Do Affirmative Action Laws Designed to Compensate India's Historically Disadvantaged Castes Explain Low Foreign Direct Investment by the Indian Diaspora

Llyana Kuziemko

Geoffrey Rapp

Follow this and additional works at: <https://scholarship.law.umn.edu/mjil>

 Part of the [Law Commons](#)

Recommended Citation

Kuziemko, Llyana and Rapp, Geoffrey, "India's Wayward Children: Do Affirmative Action Laws Designed to Compensate India's Historically Disadvantaged Castes Explain Low Foreign Direct Investment by the Indian Diaspora" (2001). *Minnesota Journal of International Law*. 11.

<https://scholarship.law.umn.edu/mjil/11>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Journal of International Law collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

India's Wayward Children: Do Affirmative Action Laws Designed to Compensate India's Historically Disadvantaged Castes Explain Low Foreign Direct Investment by the Indian Diaspora?

Ilyana Kuziemko* and Geoffrey Rapp**

INTRODUCTION

Foreign direct investment (FDI) is a crucial revenue source for many countries, of which a subset is investment by non-resident citizens. India particularly depends on such non-resident FDI.¹ However, by nearly any measure, non-resident Indians (NRIs)² invest far less in their home country than do

* M.A. expected 2001, Queen's College, Oxford University; A.B. 2000, Harvard University. Ashutosh Varshney, Associate Professor of Political Science at the University of Michigan, provided superior guidance on the earliest version of the Article.

** Law Clerk, Judge Cornelia Kennedy, U.S. Court of Appeals for the Sixth Circuit. J.D. 2001, Yale Law School; A.B. 1998, Harvard University.

1. See Raymond Brady Williams, *Americans and Religions In The Twenty-First Century: Asian Indian and Pakistani Religions in the United States*, 558 ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. 178, 194 (1998).

2. A NRI is an Indian citizen who is not resident in India. Indian law defines resident Indians as:

a citizen of India, who has, at any time after the 25th day of March, 1947, been staying in India, but does not include a citizen of India who has gone out of, or stays outside, India, in either case —

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period; [or]

a citizen of India, who having ceased by virtue of paragraph (a) or paragraph (b) or paragraph (c) of sub-clause (i) to be resident in India, returns to, or stays in, India, in either case,

other ethnic groups.³ Not only does the Indian Diaspora's behavior differ markedly from that of other similarly situated Diaspora groups, it also violates the predictions of leading political scientists. The low level of NRI investment is particularly surprising when compared to the behavior of overseas Chinese in similar circumstances.⁴ This Article explores this puzzle. In the examination, this Article shows that none of the previously articulated explanations offered for this difference are entirely convincing. Instead, this Article will pursue an explanation based upon a vicious circle of resentment between NRIs and resident Indians stemming from India's unique institution of caste and the affirmative action laws designed to remedy historical inequities.

I. THE PROBLEM OF NRI INVESTMENT

On August 15, 1997, the Indian Diaspora of New York City gathered in Manhattan to celebrate the fiftieth anniversary of India's independence from Britain.⁵ The conference not only showcased the history of the nationalist movement and the development of India as an independent state, but also

-
- (a) for or on taking up employment in India, or
 - (b) for carrying on in India a business or vocation in India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period; [or]

a citizen of India, who, not having stayed in India at any time after the 25th day of March, 1947, comes to India for any of the purposes referred to in paragraphs (a), (b) and (c) of sub-clause (iii) or for the purpose and in the circumstances referred to in paragraph (d) of that sub-clause or having come to India stays in India for any such purpose and in such circumstances.

Explanation – A person, who has, by reason only of paragraph (a) or paragraph (b) or paragraph (d) of sub-clause (iii) been resident in India, shall, during any period in which he is outside India, be deemed to be not resident in India.

Foreign Exchange Regulation Act, 1973 (46 of 1973) (India).

3. See Alam Srinivas & Ranju Sarkar, *Billionaire NRIs affluent*, BUSINESS TODAY, June 22, 2000, at 89.

4. "NRI investment in India is a fraction of the inflows mobilised by China from its massive Chinese diaspora, which has helped build the type of infrastructure lacking in India." Khozem Merchant, *Asia-Pacific, Middle East and Africa: New Delhi and Bombay Compete For Attention*, FINANCIAL TIMES, Jan. 8, 2001, at 8.

5. See Celia W. Dugger, *A Golden Anniversary in Queens; Indian and Pakistani Immigrants Honor 2 Homelands*, N.Y. TIMES, Aug. 15, 1997, at B1.

highlighted the accomplishments of NRIs—people of Indian descent living overseas.⁶ Indeed, the NRIs had much to celebrate. Most have prospered economically since leaving India; the 1990 U.S. Census revealed that Indian-Americans, with an average annual income of \$52,908, are the wealthiest ethnic group in the United States, even surpassing native-born whites.⁷ NRIs also excel in the classroom. In 1997, four out of the ten winners of the prestigious Westinghouse Science and Technology Competition were of Indian descent as were the second and third place winners of the National Spelling Bee.⁸ In the United States, Indian-American students earn among the highest scores on standardized tests and gain admission to the most prestigious universities in the world.⁹

Immediately prior to this celebration of success, India's Consul General of New York, Harsh K. Bhasin, "chided non-resident Indians (NRIs) for their failure to substantially invest their money and skills in India."¹⁰ He noted all the wealth and talent of his audience, and demanded to know why more of it did not find its way back to India.¹¹ Quoting statistics, he cited the investment of other Diaspora—especially the Chinese—in their home countries, and charged the NRIs with shameful neglect.¹²

A. NRI INVESTMENT APATHY

The Consul's criticism reflects the sentiment of many in India, who view the apathy of their overseas brethren with disappointment. They correctly see the NRI community as integral to the future of the Indian economy: the GDP of the approximately ten million NRIs roughly equals that of the 900

6. *See id.*

7. *See* Rahul Jacob, *Overseas Indians Make it Big*, FORTUNE, Nov. 15, 1993, at 168.

8. *See* Jonathan Foreman, *Bombay on the Hudson*, 7 MANHATTAN INSTITUTE CITY J. 14 (1997).

9. While colleges do not publish figures subdividing Asian-Americans between South and East Asian groups, the prevalence of Indian-Americans at top universities is easily observed. For example, the personal ads of NRI newspapers like *India Abroad* are replete with ads from Ivy-League graduates or their parents. *See, e.g., Matrimonial Male*, INDIA ABROAD, Oct. 6, 2000 (advertising that "Agarwal parents seek attractive match; for US raised son, final yr medical student, MS Engineering from Ivy League").

10. *Non-Resident Indians Chided for Failing to Invest*, ASIA PULSE, July 28, 1997.

11. *See id.*

12. *See Id.*

million resident Indians.¹³ NRIs also possess an important knowledge of India's local customs that gives them an advantage over other foreign investors in India in so far as NRIs are better positioned to identify the kinds of investments likely to yield high returns and stimulate economic growth. And while fear of Western influence has made the Indian government prone to restrict foreign investment, no such fears exist toward NRI investment.¹⁴ Thus, the Diaspora community could serve as a stable source of investment despite changes in the nation's political climate, an important component of any prescription for economic development.¹⁵ "If India takes maximum advantage of its overseas Indian resources, it could forge ties that will boost the country's ability to become a regional, even a global, player."¹⁶

Those, like India's New York Consul, who feel NRIs have shirked their responsibility toward their homeland, point to the contributions of other Diaspora.¹⁷ Throughout history, immigrants have not only benefited their host nation, but have also returned wealth and expertise to their homelands. Nowhere is this more evident than in Asia. The recent recovery of the Vietnamese economy is credited mainly to the two million Vietnamese living abroad.¹⁸ In Taiwan, the growth of information technology has depended greatly upon the return of a well-educated Diaspora.¹⁹ "This Pacific Rim Diaspora has already played a significant role in the growth of East Asia's Tiger economies The results can be seen in the gleaming skylines of Jakarta, Singapore and Kuala Lumpur."²⁰

The most powerful Diaspora community in the world does not hail from one of the Tigers, but from the People's Republic of China.²¹ Financial analysts have nicknamed the overseas

13. See Joyce Barnathan, *Passage Back to India*, BUSINESS WEEK, July 17, 1995, at 44.

14. See *id.*

15. See *id.* at 44-45.

16. *Id.* at 46.

17. See *Non-Resident Indians Chided*, *supra* note 10.

18. See Sampat Mukherjee, *The Changing Face of Vietnam*, BUSINESS LINE, July 23, 1997, at 8.

19. Matt Miller, *Staying Away*, FAR EASTERN ECONOMIC REVIEW, July 10, 1997, at 69.

20. Klaus Friedrich, *China Needs Market Reform*, N.Y. TIMES, Sept. 28, 1997, at 14.

21. See Rob Brown, *Putting the Sporan into Diaspora*, SUNDAY HERALD, Jan. 23, 2000, at 8 ("in sheer cash terms, no country in the world has such a powerful Diaspora as China"); *Coming up: The Asian Century? (Part 2)*, IRISH TIMES, Dec. 29,

Chinese "the Bamboo Network" and marvel at their capacity to raise money abroad and invest it back home.²² Estimated at anywhere from twenty-five to fifty-five million people, the Chinese Diaspora claims some of the richest businesspeople in the world.²³ In Southeast Asia as a whole, overseas Chinese make up only seven percent of the population but control an astounding seventy percent of the region's private wealth.²⁴ Perhaps the best demonstration of the concentrated power of this group is their influence on China's relations with Taiwan. Though an enemy of China since General Chiang crossed the Formosa Straits in 1949, Taiwan is, ironically, China's largest investor due to the heavy concentration of overseas Chinese living there.²⁵

Overseas Chinese and NRIs share two important characteristics: they are the two largest and the two richest Diaspora communities in the world. The similarities end there. Overseas Chinese have been the driving force behind China's miraculous double-digit growth rates.²⁶ Since the mid-1980s, overseas Chinese have accounted for over two-thirds of all FDI in China, a proportion that has risen to over eighty percent in the past several years.²⁷ The corresponding figures for NRI investment show an embarrassing contrast. NRI investment as a percent of total foreign direct investment in India was 3.7 percent in 1991,²⁸ 11.3 percent in 1992,²⁹ 11.8 percent in 1993,³⁰ 3.5 percent in 1994,³¹ 2.2 percent in 1995,³² 6.1 percent in 1996,³³ 3.3 percent in 1997,³⁴ and 2.4 percent in 1998.³⁵ Though

1999, at 50 ("The boom in communist China is partly due to overseas Chinese who account for four fifths of all investment in the country. No other country in the world . . . has such a powerful Diaspora."); see also Peter C. Newman, *The Dawn of a New Millennium*, MACCLEAN'S, Dec. 20, 1996, at 48.

22. See Uli Schmetzer, *Expatriates are China's Golden Geese*, CHI. TRIB., May 26, 1997, at 1.

23. See generally *Id.*

24. See *Id.*

25. See CONSTANCE LEVER-TRACY, DAVID IP & NOEL TRACY: THE CHINESE DIASPORA AND MAINLAND CHINA: AN EMERGING ECONOMIC SYNERGY 171 (1996).

26. See *id.* at 65.

27. See F.J. Khergamvala, *The Bamboo Empire as Asia's Growth Engine*, THE HINDU, June 11, 1997, at 11.

28. SECRETARIAT FOR INDUSTRIAL ASSISTANCE, MINISTRY OF INDUSTRY, INDIA, STATISTICS (on file with authors).

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

NRIs reacted enthusiastically in the two years following the 1991 economic liberalization, their contribution to total Indian FDI peaked at only 11.8 percent, and that proportion has sharply dropped since then.³⁶ Over the past few years, NRI investment has constituted less than five percent of total FDI.³⁷ While the Chinese Diaspora is both larger and richer, the disparity between levels of investment remains astounding, even after adjusting for population and wealth. Overseas Chinese invest twenty percent of their liquid assets,³⁸ while NRIs invest less than one percent.³⁹

B. THE GENERAL PERCEPTION OF NRI PRIDE AND THE ACADEMIC PROGNOSTICATIONS

The relative lack of NRI investment in India is surprising on two levels. First, it contradicts the general perception of mutual respect promoted by both NRIs and native Indians.⁴⁰ Witness the elaborate fiftieth anniversary celebrations that took place in India and across the globe.⁴¹ Most did not take the uncomfortable turn that the Manhattan conference did,⁴² but instead unabashedly celebrated the supportive connection

34. *Id.*

35. *Id.*

36. Compare *supra* notes 28-34 and accompanying text. Additional factors contributed to the immediate crash in NRI investment.

First, the outbreak of the Gulf War precipitously increased India's oil import bills and sharply decreased its exports and remittance payments from the Middle East. Second, domestic political turmoil resulted in capital flight, as non-resident began to withdraw their repatriable deposits. In June, both Standard & Poor and Moody's downgraded India's credit-worthiness to the lowest level, and the international capital markets cut off short-term credit. With its foreign exchange reserves standing at less than one billion dollars, or the equivalent of two weeks worth of import cover, India seemed to be on the verge of defaulting on its US \$ 71 billion external debt.

Rajesh Swaminathan, *Regulating Development: Structural Adjustment and the Case for National Enforcement of Economic and Social Rights*, 37 COLUM. J. TRANSNAT'L L. 161, 191 (1998).

37. See *supra* notes 31-34 and accompanying text.

38. See Schmetzer, *supra* note 22, at 1.

39. See Tony Tassell, *Non-Resident Indians*, FIN. TIMES, Mar. 10, 1997, at 4.

40. Cf. Raj Bhala, *Enter the Dragon: An Essay on China's WTO Accession Saga*, 15 AM. U. INT'L L. REV. 1469, 1469 (2000) (citing that NRIs invest in India because of their respect for Indian culture).

41. See Celia W. Dugger, *A Golden Anniversary in Queens; Indian and Pakistani Immigrants Honor 2 Homelands*, N.Y. TIMES, Aug. 15, 1997, at B1.

42. See *id.*

between mother India and her overseas children.

On a second level, the relative lack of NRI investment in India runs counter to the thinking of some of the world's leading political scientists. Harvard's Samuel Huntington has described the post-Cold War world as one increasingly characterized by alliances along cultural lines.⁴³ Rather than a world of nations divided by ideology, Professor Huntington envisions a world divided by language, ethnicity, and the other markings of the cultural groupings he calls "Civilizations."⁴⁴ Within the context of this theory, its Diaspora is expected to form close ties to a civilizational brethren in home countries, lending both economic and political support.⁴⁵ Observing the activities of ethnic groups in America, Huntington writes that Diaspora tend to support their home governments.⁴⁶ "Most important[ly], Diaspora can influence the actions and policies of their host country and co-opt its resources and influence to serve the interests of their homeland."⁴⁷ He writes:

Ethnic groups have played active roles in politics throughout American history. Now, ethnic Diaspora groups proliferate, are more active, and have greater self-consciousness, legitimacy, and political clout. In recent years, Diaspora have had a major impact on American policy towards Greece and Turkey, the Caucasus, the recognition of Macedonia, support for Croatia, sanctions against South Africa, aid for black Africa, intervention in Haiti, NATO expansion, sanctions against Cuba, the controversy in Northern Ireland, and the relations between Israel and its neighbors.⁴⁸

There is no reason to expect these actions to be limited to the political realm. Civilizational factors should also determine the ordering of international economic activity. "Diaspora provide many benefits to their home countries. Economically, prosperous Diaspora furnish major financial support to the homeland, Jewish-Americans, for instance, contributing up to one billion dollars a year to Israel. Armenian-Americans send enough to earn Armenia the sobriquet of the Israel of the Caucasus."⁴⁹ Nonetheless, the dynamic between India and NRIs

43. See generally Samuel P. Huntington, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996).

44. See generally *id.*

45. See *id.*

46. See *id.*

47. Samuel P. Huntington, *The Erosion of American National Interests*, 76 FOR. AFF. 28, 39 (1997).

48. HUNTINGTON, *supra* note 43.

49. *Id.*

does not fit this theoretical model. There must be an explanation, unique to India, which accounts for its deviation from the norm.

II. COMMON EXPLANATIONS FOR NRI INVESTMENT PATTERNS

The few studies that have compared NRI and overseas Chinese investment patterns generally point to three explanations. First, it is alleged that overseas Indians do not possess the "entrepreneurial spirit" of overseas Chinese.⁵⁰ After immigration, these studies assert, NRIs became doctors and engineers while overseas Chinese became shopkeepers and traders.⁵¹ As risk-averse professionals, NRIs have less inclination to invest in fledgling ventures back home.⁵² Second, it is alleged that China is simply a more attractive market than India, thus implying the divergence in overseas Chinese and NRI investment is not driven by any reason more mysterious than proper attention to the bottom line.⁵³ Third, it is alleged that China's successful courting of its Diaspora has been due to lucky timing: the government opened the nation to foreign investors just as the overseas Chinese were striking it rich abroad.⁵⁴ Timing, in India's case, may not have been so fortuitous.

A. LIMITED "ENTREPRENEURIAL SPIRIT" IN THE INDIAN DIASPORA

This first explanation certainly affirms common ethnic stereotypes of Indians and Chinese, especially those stereotypes held in the United States. One calls to mind the Indian doctor and the Chinese shopkeeper. Statistics demonstrate that a strong professional affinity has long existed in the NRI community.⁵⁵ In the years of 1971 to 1975 about forty-six percent of Indian immigrants to the United States were occupationally categorized as Professional, Executive,

50. See *infra* Part I.A.

51. See *id.*

52. See *Id.*

53. See *infra* Part I.B.

54. See *infra* Part I.C.

55. See DEEPAK NAYYA, *MIGRATION, REMITTANCES AND CAPITAL FLOWS: THE INDIAN EXPERIENCE* (1994).

Administrative, or Managerial.⁵⁶ The proportions decreased to approximately thirty-one percent from 1976-79,⁵⁷ twenty-one percent from 1981-85,⁵⁸ and twenty-one percent from 1986-1990.⁵⁹ During the same periods of time, about three to twelve percent of the Indian immigrants to Canada were Professional, Executive, Administrative, or Managerial.⁶⁰ More specifically, from 1971 to 1975 Professionals, Executives, Administrators, and Managers accounted for twelve percent of Indian immigrants;⁶¹ from 1976 to 1980 for four percent;⁶² from 1981 to 1985 for three percent;⁶³ and from 1986-1990 for three percent.⁶⁴

These statistics reveal that "professionals" constitute the major occupational category for Indian immigrants since 1971, especially in the United States. Most Indian immigration to the United States began after the Immigration Act of 1965,⁶⁵ which actively sought skilled and professional immigrants.⁶⁶ It is thus not surprising that almost half of all Indian immigrants to the United States in the years immediately following the Act were professionals. Many Indian-Americans *are* doctors and engineers; for example, one in every ten anesthesiologists in the United States is an NRI.⁶⁷ Ajit Kumar, the chairman of the India Investment Center, attributes the poor investment record of NRIs to their job descriptions, claiming, "unlike the Chinese, the Indian Diaspora is largely technical and professional in nature."⁶⁸ The *Financial Times* also ascribes to this explanation, noting that "[o]verseas Indians have been more successful in professions and at the middle level of management and business. . . . [T]he number owning large business groups is small, compared with the Chinese."⁶⁹ Because NRIs have grown accustomed to the prosperity of a steady, professional

56. See *id.*

57. See *Id.*

58. See *Id.*

59. See *Id.*

60. See *Id.*

61. See *Id.*

62. See *Id.*

63. See *Id.*

64. See *Id.*

65. Pub. L. No. 89-235, 79 Stat. 911 (1965).

66. See John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067, 1115 (1998).

67. See Foreman, *supra* note 8.

68. See Amit Jain, *Chinese Expatriates Have Done More for Their Country*, INDIA ABROAD, Mar. 8, 1996, at 25.

69. Tassell, *supra* note 39, at 4.

occupation, they have not developed the "entrepreneurial spirit" of the Chinese.⁷⁰ The assumption is that NRIs are risk-averse, preferring the assurance of a professional income to the uncertain future profits of a business in India.

The limited entrepreneurial spirit explanation encounters several problems. First, the image of the Indian professional has less credibility now than it did thirty years ago. The Indian doctor and the Chinese shopkeeper may be convenient labels, but they rely more on antiquated stereotypes than current demographics. As the statistics cited above demonstrate, the professional share of Indian immigrants to the United States has steadily dropped.⁷¹ In contrast, the number of NRI immigrants in the executive, administrative, and managerial category, the classification, which captures entrepreneurs has risen.⁷² Indian immigration to Canada has long since shed its professional nature, as the share belonging to the professional category dropped from 11.1 percent in 1971-75 to a mere 2.1 percent in 1986-90. Note that these figures understate entrepreneurial sentiment among NRIs because they do not reflect the significant number who gave up their professional careers and started businesses after arriving in North America.⁷³ And today's Indian professionals are not just doctors and engineers, but management consultants and investment bankers — hardly the types to shy away from risky moneymaking opportunities. NRIs make up about two percent of McKinsey and Company's staff, representation well beyond their proportion in the population.⁷⁴

Moreover, NRIs are experiencing great success as entrepreneurs. The 1990's have shown that a great entrepreneurial spirit has been kindled in the Indian Diaspora. In the United States, the feats of Indian entrepreneurs have been quite surprising indeed, and have astounded the business community. With over 12,000 properties, NRIs own forty-six percent of the nation's motels, and twenty-six percent of all lodgings.⁷⁵ While they have concentrated on the lower-price

70. *See id.*

71. *See supra* notes 55-64 and accompanying text.

72. *See id.*

73. It is true that these figures also fail to account for career changes in the opposite direction, but such changes are probably very rare, as becoming a doctor or lawyer requires large investments of time and money for professional school.

74. *See Jacob, supra* note 7, at 169.

75. *See* Edwin McDowell, *Hospitality is Their Business*, N.Y. TIMES, Mar. 21, 1996, at D1.

chains (NRIs run forty percent of Days Inn motels and an NRI is now president of the Knights Inn franchise), they have recently begun to buy properties from Radisson, Sheraton, and Hilton.⁷⁶ In New York City, NRIs dominate many niches of the economic landscape. South-Asians run 30,000 of the city's 45,000 taxicabs as well as an astounding 300 of the city's 330 newsstands.⁷⁷

However, Indian-Americans' success in the marketplace pales in comparison to the business triumphs of NRIs in Great Britain. The *Financial Times* recently called the NRIs "the new Jews" and credited them with being at "the heart of the UK's enterprise economy."⁷⁸ Questionable nickname aside, the *Times'* general sentiment is shared by other financial journals. *Fortune* magazine reported in 1993 that NRIs owned sixty percent of all small retail outlets in Britain, a proportion that has since grown.⁷⁹ Such overwhelming evidence of NRI ingenuity and risk-taking makes the depiction of NRIs as conservative professionals ring hollow. Joel Kotkin, a senior fellow at the Pepperdine University Institute for Public Policy, disputes the stereotypical characterization of the NRI.⁸⁰ "These Indians are modern Horatio Algiers. They're willing to start in marginal and sometimes risky areas that native-born Americans are not interested in going into, and work incredibly long hours."⁸¹

B. INDIA'S INFERIOR INVESTMENT CLIMATE

The second explanation claims that China presents a more stable, profitable investment climate than India.⁸² Hence, overseas Chinese can invest in their homeland with more confidence than NRIs can in theirs. The Chinese economy has indeed been one of the world's most attractive investment sites in the 1990s.⁸³ China boasts a large, well-educated labor force and a stable socio-economic setting, allegedly two features that

76. See *Id.* at D1, D9.

77. See Foreman, *supra* note 8.

78. Khozem Merchant, *Indian Business in Britain*, FINANCIAL TIMES, June 24, 1997, at 29.

79. See Jacob, *supra* note 7, at 168.

80. See McDowell, *supra* note 75.

81. *Id.* at D1, D9.

82. See, e.g., Bill Mongelluzzo, US Investors Urged To Study China, J. OF COMMERCE, Feb. 6, 1989, at 5A.

83. Cf. C. Gopinath, *Seeking Guarantees For Risky Investments*, BUSINESS LINE, May 17, 1999 (warning "that although the size of the market and its growth made investments attractive" investors should be thorough before investing in China).

India cannot claim.⁸⁴ In 1996, only forty-eight percent of resident Indians could read,⁸⁵ compared to seventy-five percent of resident Chinese.⁸⁶

The great strides India has made in providing higher education are matched only by its conspicuous failure to universalize primary education. This fact is tellingly revealed in a report that ranks India as one of the most illiterate and least gender sensitive countries in the South-Asian region. It is a shame that on the eve of the fiftieth anniversary of the Indian Constitution, its mandate to the State, namely, "to provide within a period of ten years" from its commencement, "free and compulsory education for all children," has remained a chimerical claptrap. The report also rightly warned of a catastrophe if the region fails to universalize basic education within the next five years. For too long, poverty has been blamed for all the social ills afflicting society. In fact, there are several countries much poorer than India that have strikingly higher literacy rates, including Kenya, Rwanda, and Vietnam. . . . [India] has denied basic education to the vast majority of the poor who lack money and liberally subsidized the education of those who have money.⁸⁷

Additionally, infant mortality rates are twice as high in India, and average life expectancy is nine years lower.⁸⁸ Moreover, China's Communist leaders have long provided a level of political and social stability important to investors, though worrisome to Western politicians and human rights activists.⁸⁹ In sharp contrast, India's parliamentary democracy, the largest (and perhaps most volatile) in the world, inherently promotes political change.⁹⁰ Governments can be overturned at any moment, and foreigners never know when an election might usher in an administration hostile to their influence and investment. Finally, corruption in India is frequently offered as

84. See Helen Chang, *Far Eastern Group of Taiwan Sees Future in Financial Services*, BUSINESS TIMES, Apr. 19, 1993, at 10; Arthur W. Zafiropoulos, *Asia-Pacific: A New Semiconductor Market Dynamic And A New Need For Lithography Tools*, 8 SOLID STATE TECH. 29 (2000).

85. See THE WORLD ALMANAC AND BOOK OF FACTS 772 (Robert Famighetti ed., 1995).

86. See James Taylor, Jr., *Vietnam: The Current Legal Environment for U.S. Investors*, 25 LAW & POLY INT'L BUS. 469, 470 (1994).

87. Vijayashri Sripati, *Toward Fifty Years of Constitutionalism and Fundamental Rights in India: Looking Back to See Ahead (1950-2000)*, 14 AM. U. INT'L L. REV. 413, 485-86 (1998).

88. See WORLD HEALTH ORGANIZATION, 2000 WORLD HEALTH REPORT.

89. See Hilary K. Josephs, *Labor Law In A "Socialist Market Economy": The Case of China*, 33 COLUM. J. TRANSNAT'L L. 559, 580 (1995).

90. See, e.g., Kavita Natarajan, *Combatting India's Heroin Trade Through Anti-Money Laundering Legislation*, 21 FORDHAM INT'L L.J. 2014, 2066 (1998); Toral Patel, *Corrupt Practices in India: No Payoff*, 20 LOY. L.A. INT'L & COMP. L.J. 389, 398 (1998).

an excuse to avoid investing in the country.⁹¹

The problem with this explanation is that it predicts not only low NRI investment, but also low foreign direct investment overall. This simply does not match the historical record. Since 1991, when Prime Minister Rao's Congress introduced wide-ranging economic reforms in response to the nation's balance of payments crisis, foreign investment from all parts of the world has poured into India.⁹² Investors often speak of the advantages India has over China. India inherited a modern legal system from the British.⁹³ A well-established free press holds government officials accountable to the public.⁹⁴ While China's average worker may be better educated than India's, India has some of the most talented and well-trained computer scientists, engineers, and information technology specialists—assets that should prove integral to economic success in the next millennium.⁹⁵ And most importantly, the majority of the Indian middle class speaks English.⁹⁶

A commentary in the *Wall Street Journal* by Karen Elliot House, the president of the Dow Jones Company, discusses the changing investment opportunities in Asia.⁹⁷

The allure of China is fading as Beijing proves either unwilling or unable to keep its commitments to foreign investors. . . . In contrast, "India offers what in a competitive world may be the most valuable software of all: minds that have been permitted to be open, inquisitive and creative, and men and women who are fluent in the global language of business, English."⁹⁸

The results of a recent poll of 400 executives asked to rank the labor forces of the developing nations underscores the improvements in India's investment climate. India placed second, ahead of China.⁹⁹ The report noted the astounding level

91. See Patel, *supra* note 90, at 389.

92. See generally Danielle Mazzini, *Stable International Contracts In Emerging Markets: An Endangered Species?*, 15 B.U. INT'L L.J. 343 (1997).

93. See generally VASUDHA DHAGAMWAR, *LAW, POWER AND JUSTICE* (1992).

94. See Sevanti Ninan, *History Of Indian Broadcasting Reform*, 5 CARDOZO J. INT'L & COMP. L. 341, 345 (1997).

95. See Vineeta Anand, *Reforms Pave Way For India*, PENSIONS & INVESTMENTS Oct. 18, 1993, at 17; John S. McClenahan, *Beyond Japan: The Trade Crises To Come*, 1986 PENTON/IPC, INDUSTRY WEEK, July 7, 1986, at 32.

96. See Gaiutra Bahadur, *India's High-Tech Braceros: 'New Economy' Migrant Workers*, AUSTIN AMERICAN-STATESMAN, Nov. 19, 2000, at A1.

97. See Birman Maharjan, *India-China: The Elephant Versus the Tiger in Investment Game*, INTER PRESS SERVICE, July 14, 1997.

98. *Id.*

99. See Filipino, *Indian and Vietnamese Workers Rated Asia's Most*

of corruption in China, where "personal connections rather than technology are considered to be the asset needed to get things done."¹⁰⁰

The flaws of this second theory are best displayed not in touting the positive aspects of India's investment climate, but in comparing NRI reaction to India's recent reforms with that of other investors. NRIs claim that they do not invest in India because of the poor investment climate. Do other investors share these misgivings? The answer seems to be no. Since 1991, foreign investors have taken advantage of the new liberalized climate in India, and have poured money into the nation.¹⁰¹ And while NRI investment in India has also increased since 1991, it has not kept pace with either the investment of the United States or the rest of the world.¹⁰² Generally, between 1992 and 1997 total Foreign Direct Investment (FDI) in India has grown by 628 percent (1992),¹⁰³ 128 percent (1993),¹⁰⁴ 60 percent (1994), 126 percent (1995),¹⁰⁵ 12.7 percent (1996),¹⁰⁶ and 51.8 percent (1997) each year.¹⁰⁷ More specifically, between 1992 and 1998 the FDI in India from the United States has grown 563 percent (1992),¹⁰⁸ 181 percent (1993),¹⁰⁹ 1 percent (1994),¹¹⁰ 102 percent (1995),¹¹¹ 42.5 percent (1996),¹¹² and 34.9 percent (1997).¹¹³ As for FDI by NRIs, during the same period of time, investment grew in 1992 (2128 percent),¹¹⁴ 1993 (137 percent),¹¹⁵ 1995 (45 percent),¹¹⁶ and 1996 (208.7 percent),¹¹⁷ while decreasing in 1994 (53 percent) and 1997 (17.1 percent).¹¹⁸

Competitive, AGENCE FRANCE PRESSE (SEPT. 2, 1997).

100. *Id.*

101. SECRETARIAT FOR INDUSTRIAL ASSISTANCE, MINISTRY OF INDUSTRY, INDIA, STATISTICS (on file with author).

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

Apparently, India's reforms have proven more attractive to non-Indians than to NRIs. *India Abroad*, the weekly newspaper of the Diaspora, notes that while foreign investment institutions have been increasing their portfolio investment in India, NRIs have increased neither their portfolio nor their direct investment.¹¹⁹ "The recent inflow of money into the Bombay stock market by foreign institutional investors (FIIs) is likely to continue. . . . But this perception is not shared by the non-resident Indians who are staying away. The NRIs seem to be investing neither through the FIIs nor directly."¹²⁰ Though such well-respected financial institutions as Merrill Lynch have publicly expressed confidence in the Indian economy and have substantially increased their holdings in the Bombay market, NRIs still prefer to keep their assets in New York, or more commonly, in London.¹²¹ Though they often excuse their preferences with a reference to the unattractive investment climate in their homeland, the fact that other investors no longer share their misgivings makes this excuse less than convincing.

Perhaps China still presents better overall investment opportunities than does India, but in certain sectors, India offers investors higher returns than any other nation. The most notable of these sectors is the production of computer software.¹²² Foreign investors have been rushing to get a piece of the action in this developing industry. "India's reputation in the Untied States as a computer-software centre is growing," reports the *Far Eastern Economic Review*.¹²³ "The southern Indian city of Bangalore has become practically synonymous with overseas [computer] software production."¹²⁴ No group is better situated to take advantage of this investment opportunity than NRIs. They claim some of the biggest names in the computer technology world: Suhas S. Patil, the founder of the specialty microchip manufacturer Cirrus Logic, Inc.,¹²⁵ Vinod Khosla, co-founder of Sun Microsystems;¹²⁶ and Vinod Dham,

119. See Sanjay Suri, *Difference in FII and NRI Perceptions*, *INDIAN ABROAD*, March 29, 1997, at 36.

120. *Id.*

121. *See Id.*

122. *See Miller, supra* note 19, at 69.

123. *See id.*

124. *See id.*

125. *See Suhas S. Patil-A Valley Institution*, *INDIA BUSINESS INSIGHT*, Feb. 4, 2001.

126. *See Chandrani Ghosh, Boot Camp for Engineers*, *FORBES*, Apr. 16, 2001, at

who led the Intel team that developed the Pentium microprocessor.¹²⁷ India's nascent software industry and NRI technical expertise would seem to produce a perfect synergy. But such opportunities are yet to be realized. Reports the *Far Eastern Economic Review*: "It's natural to assume these two developments intersect, with the Indian-American stars playing a key role in India's growing technology sector. In fact, they don't. . . . Few successful Indian-Americans are exporting their talents or their capital back to India."¹²⁸ Even when India offers them an investment opportunity for which they have unique advantages, NRIs refrain from investing in their home country.

C. CHINA'S FORTUITOUS TIMING

The third explanation argues that China's strong connection with its Diaspora is the result of lucky timing. China opened up its economy to foreign investors in 1979,¹²⁹ just when, according to the argument, its Diaspora was striking it rich abroad.¹³⁰ This argument is one of the main points of Constance Lever-Tracy's study on the Chinese Diaspora.¹³¹ Yet this theory, as an explanation for the differences in Chinese and Indian Diaspora investment, suffers from two flaws. The first is purely factual. Overseas Chinese have always invested back in their homelands, even before they became wealthy, and before the government loosened its controls on investment.¹³² The *Chicago Tribune* disputed the notion that overseas Chinese are only recently investing back in their homeland, and traced the long history of Diaspora support of the motherland.¹³³

This period, regarded by many as the Golden Age of the Chinese [D]iaspora in the region, is not the first time ethnic Chinese have come to the rescue of their homeland. Sun Yat Sen's Republican revolution, which toppled the Qing dynasty in 1911, was financed by contributions from overseas Chinese. The [D]iaspora funded the bulk of the wars

158.

127. See Danny O'Brien, *Finally, Charity Shakes The Valley*, SUNDAY TIMES, Mar. 4, 2001.

128. See Miller, *supra* note 19, at 69.

129. See David Wall & Kiichiro Fukasaku, *China's Open Economy Reforms 1978-1992*, in FROM REFORM TO GROWTH: CHINA AND OTHER COUNTRIES IN TRANSITION IN ASIA AND CENTRAL AND EASTERN EUROPE 141 (Chung H. Lee & Helmut Reisen eds., 1994).

130. See LEVER-TRACY, IP & TRACY, *supra* note 25, at 41-81.

131. See *id.*

132. See Schmetzer, *supra* note 22.

133. See *id.*

against Japan. Tens of thousands of Chinese professionals and academics returned to help Mao Tse-tung's fledgling regime after 1949.¹³⁴

Indeed, even before it was easy or attractive, overseas Chinese have retained strong economic ties to their homeland. Chinese historian Lynn Pan notes, "overseas Chinese remittances amounted to a considerable sum, averaging US\$80-100 million a year between 1929 and 1941."¹³⁵

The second flaw of the argument is that, following its logic, we should be witnessing a boom in NRI investment in India. India seemed to have enjoyed this same, fortuitous timing: in 1991, the Indian government opened up to foreign investment and even made special provisions for NRIs.¹³⁶ NRIs enjoyed great economic prosperity throughout the eighties and nineties,¹³⁷ so the timing would seem ideal according to the Chinese model. Yet since then, there has been no marked or sustained increase in NRI investment as a proportion of all FDI.¹³⁸

III. A LEGACY OF RESENTMENT BETWEEN OVERSEAS AND RESIDENT INDIANS

If none of these commonly offered theories provide a satisfying answer, then what does explain paltry NRI investment in India? The difference between the Indian and Chinese developments lies within the people themselves. Resentment exists between resident and overseas Indians that does not exist between native and overseas Chinese. This resentment flows in both directions: resident Indians feel jealousy and bitterness toward NRIs and NRIs express embarrassment and disdain toward their homeland. Thus, even though it would benefit NRIs to invest more in their homeland – this investment brings high returns to non-Indian investors – they choose not to. And even though it would support the growth and development of India's nascent free market economy, the

134. *Id.* at 1.

135. LYNN PAN, *SONS OF THE YELLOW EMPEROR* 205 (1990).

136. See Barnathan, *supra* note 13. Unlike foreign companies, which are limited to fifty-one percent stakes in Indian investments, overseas Indians get automatic approval for wholly-owned projects. See *Id.* Five to ten percent of IPOs are reserved for NRIs, who can own property, while foreign investors are only allowed to own their offices and homes. See *Id.*

137. See *supra* notes 75-77 and accompanying text.

138. See *supra* notes 28-35 and accompanying text.

Indian government refuses to remove several key restrictions on NRI investment.¹³⁹

A. NATIVE INDIANS' RESENTMENT OF NRIS

Does India do enough to encourage NRIs to invest? Officials in the Indian government regularly issue words of welcome to NRI investors and often unveil new schemes to entice their wealth back to the homeland.¹⁴⁰ In 1996, India's Financial Minister, P. Chidambaram, greeted NRI entrepreneurs with open arms by proclaiming "You are welcome to India because you have the ideas, skills and the technology we need. You are doubly welcome because you are Indian."¹⁴¹ Yet many NRIs feel that they face a hostile government back home. The NRI newspaper *India Abroad* reports that "Indian expatriates in the United States feel that despite changing attitudes with economic liberalization, the Indian government is still not doing enough to exploit the financial strength of non-resident Indians to develop its economy."¹⁴² Indeed, the government often sends mixed signals. Just weeks before Chidambaram's speech, Jamshyd Godrej, a prominent Indian industrialist and head of a visiting Confederation of the Indian Industry delegation, essentially told NRIs in Dallas, Boston and Chicago to "back off" and not to "waste their time in India."¹⁴³ He also blamed any difficulties NRIs have encountered with ventures in India on a lack of preparation on the part of the NRIs, not on cumbersome government regulations.¹⁴⁴ "Please don't come to India with the feeling that you have left India and that you must do something for India. . . . Very often we hear in India . . . NRIs who have come, who have faced a lot of difficulties. They have trouble because they have not done their homework."¹⁴⁵ Such antagonism does not sit well with NRIs. Sushil Bhatia,

139. See, e.g., *NRIs Urge Delhi Not To Withdraw Tax Benefits*, KHALEEJ TIMES, Aug. 16, 1999 (citing a recent Authority of Advance Rulings of India ruling decreasing the tax benefit of investing in India).

140. See Somini Sengupta, *India Taps Into Its Diaspora; Expatriates Buy Bonds for Love of Country, and 7.75% Interest*, N.Y. TIMES, Aug. 19, 1998, at B1.

141. James Kynge, *India Seeks to Reverse Its Brain Drain*, FIN. TIMES, June 27, 1996, at 4.

142. Nirmal Mitra, *Feeling of Getting Little Help in Delhi*, INDIA ABROAD, Mar. 8, 1997, at 23.

143. Aziz Haniffa, *Some Sound Advice for NRIs*, INDIA ABROAD, June 21, 1996, at 36.

144. See *Id.*

145. *Id.*

president of JMD International, a labeling and packaging company that has invested in a joint venture in New Delhi, places the blame for the difference between overseas Chinese and NRI investment squarely on the Indian government.¹⁴⁶ "[T]he Chinese government does more for its expatriates and the expatriates do a lot more for their country because they have better acceptance."¹⁴⁷ NRIs like to point to the perks China offers its Diaspora: free land,¹⁴⁸ access to low-wage labor (prison labor, say human rights activists),¹⁴⁹ generous tax concessions,¹⁵⁰ and profitable manufacturing rights.¹⁵¹

Specifically, NRIs want to be treated as native investors, thereby avoiding many of the complex regulations foreign investors still face. Though the government has opened up many sectors of the economy to NRI investment, some of the most important sectors remain protected.¹⁵² The well-educated, technically-proficient Diaspora would most naturally invest in information technology industries, yet the telecommunications, broadcasting, transportation, print and electronic media sectors are all restricted.¹⁵³ The Hinduja family, the most wealthy and famous of India's Diaspora, has regularly called for the imminent termination of government restrictions on domestic industries.¹⁵⁴ "We have no objection to the government [placing restrictions on investment] to domestic Indian industry," said S.P. Hinduja, president and global coordinator of the IndusInd International Federation. "But such [restrictions] should be within a specified time period of two to three years."¹⁵⁵ According to NRIs, the government's hostility extends beyond mere economic matters. They charge the government with trying to sever NRI political connections to the sub-continent.¹⁵⁶ Ever since the mass emigration began in the 1960s, NRIs have pressured their government for dual citizenship rights, but to no

146. See Mitra, *supra* note 142.

147. *Id.* at 23.

148. See *id.*

149. See *id.*

150. See *id.*

151. See *id.*

152. See Hinduja Suggests 5-point Formula to Attract Foreign Direct Investment, BUS. LINE, Sept. 17, 1997, at 9.

153. See *id.*

154. See Non-Resident Indians Forecast \$100 Billion in Investment, ASIA PULSE, Sept. 17, 1997.

155. *Id.*

156. *Id.*

avail.¹⁵⁷ Such status would allow NRIs to vote in Indian elections, a privilege for which many yearn. In a poll taken by *Little India*, a monthly magazine of the Diaspora, over eighty percent of NRIs wanted the right to participate in elections back home.¹⁵⁸ In a largely symbolic move, the Indian government recently issued People of Indian Origin (PIO) cards to NRIs.¹⁵⁹ While they may strike an emotional chord with NRIs, they will probably not inspire increased NRI investment because they accord the carrier no investment advantages.

Beyond the PIO cards, the government refuses to further accommodate NRI demands, whether economic or political. In a democracy, the government is generally held accountable to popular opinion, and popular opinion in India is set against the NRI. Resident Indians harbor great resentment toward NRIs, or as they have come to be known in India, "Not Respected Indians" or "Not Really Indians."¹⁶⁰ Dr. V. Balasubramanian, in his study of Indians abroad, writes that a strong sense of jealousy, at times well-founded and at times irrational, exists toward the NRI.¹⁶¹

A lot of confusion and unreality exists in the NRI - mother country problem. Some issues are not properly analyzed, others not understood. Prejudice against NRIs at some levels also plays a part. The average Indian even is jealous of the NRI who he feels has a fuller and more prosperous life abroad.¹⁶²

Such jealousy is fueled by the notion that NRIs refuse to share the fruits of their prosperity with their countrymen back home.¹⁶³ Kuldip Nayar, India's former High Commissioner in London, in a commentary for the *Asian Business Line*, epitomized native Indian resentment toward the NRI.¹⁶⁴

Most Indians abroad . . . are ugly Indians They say that they have tan, man, and dhan at different places. Tan (body) is where they live, the particular country. Dhan (money), they say openly, is in London, where they also have a flat or two to make short sojourns. Of course, their man (heart) is in India. And when they say so they have no tug of

157. See Nirmal Ghosh, *Dual Indian Citizenship On The Cards*, STRAITS TIMES, Sept. 8, 2000, at 5.

158. See Achal Mehra, *Too Muddled To Call*, LITTLE INDIA, May 1996.

159. See K.S. Nayar, *Impact of Incentives to NRIs is Assessed*, INDIA ABROAD, June 12, 1998, at 30.

160. See Tassell, *supra* note 39, at 14.

161. See V. BALASUBRAMANIAN, *INDIANS ABROAD: THE NRI SYNDROME* (1987).

162. *Id.* at 27.

163. See Kuldip Nayar, *The Ugly Indians*, BUS. LINE, Oct. 17, 1997, at 24.

164. *Id.*

conscience.¹⁶⁵

Yet, there is still little or no talk of investment.¹⁶⁶

To be fair, NRIs face a Catch-22. Even when they do invest back home, Indian resentment does not subside. Indians now associate NRI money with political corruption. The *Far Eastern Economic Review* outlined these fears.¹⁶⁷ "NRI money meshes easily into old wheels of corruption, lifting the price of influence and providing extra, untraceable sources of cash."¹⁶⁸ This foreign component threatens the old, established Hindu families, who do not miss an opportunity to lash out at the NRIs.¹⁶⁹ J.R.D. Tata, patriarch of one of the sub-continent's oldest business families, cautions that NRIs have "black money going out of the country, laundered abroad, and brought back in as 'white' money."¹⁷⁰

Finally, there exists a cultural component to native resentment toward NRI wealth. Increased NRI involvement in India (whether economic or political) enhances Western influence in the country.¹⁷¹ Suddenly, Indian children want to emulate the older family member living in the United States or Great Britain. From Gandhi on down, India has long professed a wish to end any dependence on the West—why should it be so eager to rely on NRI investment? "The NRI ideal sits uncomfortably on India's familiar rhetoric of self-reliance," the *Far Eastern Economic Review* argues.¹⁷² "Many newspaper columnists still reveal a fear of foreign domination. They reserve special venom for NRI writers such as V.S. Naipaul, author of *India, the Wounded Civilization*, or Ved Mehta of *The New Yorker* magazine, who have had caustic jousts with the old motherland."¹⁷³

B. NRI ANTAGONISM TOWARDS THE INDIAN GOVERNMENT

Certainly, the bitterness many Indians feel toward NRIs serves as an impetus for reciprocal NRI resentment toward the sub-continent. NRIs often seem impatient to cut their

165. *Id.*

166. *See id.*

167. *See* James Clad, *Paradise Abroad*, FAR E. ECON. REV., Apr. 26, 1990, at 26.

168. *Id.*

169. *See id.*

170. *Id.*

171. *See id.*

172. *See id.*

173. *Id.* at 28

connection with India and form new ties to their adopted home. Roger Daniels, in his work on the Indian Diaspora, reports that in the United States, Indians are the most eager immigrant group to become naturalized U.S. citizens.¹⁷⁴

[R]esults show that not only have Asians in general been more likely than most other persons to become naturalized U.S. citizens within a short time of their eligibility, but also that Asian Indians were more likely to do so than were members of other major Asian ethnic groups The same data, when broken down into five main Asian ethnic groups, showed Indians with by far the highest naturalization rate, more than 80 percent. The next highest group, Filipinos, showed a rate just over 60 percent.¹⁷⁵

Enthusiasm to participate in the civic life of their new homeland alone does not establish the existence of NRI resentment toward India, but does suggest a certain eagerness to cut ties with the mother country. Indeed, NRIs often seem embarrassed about India. They constantly criticize the government's economic policies.¹⁷⁶ A *Little India* commentary by Vijay Prashad noted that "[t]he NRI's middle-class relatives back home constantly reiterate the need for exaltation of the new policies of the Indian government; the NRI repeatedly informs the relatives back home of the success of supply-side economics and the need for less government intervention."¹⁷⁷ Whenever any turmoil rocks the Indian political landscape, NRIs quickly and loudly complain that India scares away investors with its instability.¹⁷⁸ The failure of the United Front coalition government in November 1997¹⁷⁹ gave NRIs just such an opportunity, and they took full advantage of it. Ram Buxani, chairman of the Overseas Indians' Economic Forum, sounded with alacrity the warning bells of an economic collapse.¹⁸⁰ "The economy and the image of India have taken a beating at the collapse of the United Front government which cannot be

174. See ROGER DANIELS, *HISTORY OF INDIAN IMMIGRATION TO THE UNITED STATES* (1989).

175. *Id.* at 45.

176. See *NRIs Express Dismay Over Political Instability in India*, *ASIA PULSE*, Dec. 1, 1997.

177. Vijay Prashad, *A New Identity: We Must Forge Complex Cultures of Solidarity*, *LITTLE INDIA*, April 1997.

178. See *NRIs Express Dismay*, *supra* note 176.

179. The government collapsed after the United Front refused to drop from its coalition a party that had supported the Tamil Tigers, responsible for assassinating India's Prime Minister. See *Back to the Ballot*, *THE ECONOMIST*, Dec. 6, 1997, at 38.

180. See *NRIs Express Dismay*, *supra* note 176.

repaired in the near future."¹⁸¹ Prashad argues that NRI frustration induced by the perceived incompetence of the Indian government masks a deeper resentment generated by their association with a poor, largely illiterate nation.¹⁸² "For the affluent NRIs, the image of the homeland as the post-colonial battlefield between the wealthy and the impoverished is an embarrassment in their bourgeois American context."¹⁸³

In sharp contrast, overseas Chinese express pride, not embarrassment, toward their homeland. Indeed, many political analysts view China's connection with its Diaspora as so strong that it compromises the foreign policies of host nations.¹⁸⁴ Professor Huntington argues that "Chinese-Americans . . . overwhelmingly pressure the United States to adopt favorable policies towards China. Culture has supplanted ideology in shaping attitudes in Diaspora populations."¹⁸⁵ Conversely, Indian-Americans seem to care little about US policy toward India.¹⁸⁶ In a poll taken last year, Indian-Americans ranked domestic issues such as crime and education highest among political concerns, far above foreign policy toward India.¹⁸⁷

As we have seen, NRIs are quick to criticize the Indian government; overseas Chinese, however, exhibit sympathy even in the face of the most horrifying atrocities. After the Tienemann Square massacre, many foreign investors pulled out of China in reaction to the government's violent repression of the student demonstration.¹⁸⁸ Into this vacuum, the Diaspora poured their millions, and helped their homeland survive the difficult economic aftermath of the crisis.¹⁸⁹ More recently, the visit of Chinese President Jiang Zemin in November 1997 showcased Diaspora loyalty to the Chinese government.¹⁹⁰ Amid human rights protests on issues ranging from prison labor to Tibetan independence, Chinese-Americans welcomed and defended the president of their homeland.

181. *Id.*

182. *See* Prashad, *supra* note 177.

183. *Id.*

184. *See* HUNTINGTON, *supra* note 43.

185. *Id.*

186. *See* Lavina Melwani, *The Politics of Little India: Political Sideshow*, LITTLE INDIA, Nov. 30, 1996.

187. *See id.* at 21.

188. *See* Schmetzer, *supra* note 22.

189. *See id.* at 14.

190. *See* *Jing ends 8-day visit to US*, BOSTON GLOBE, Nov. 4, 1997, at A9 (describing ethnic Chinese rallying in support of Jiang).

IV. A VICIOUS CYCLE: SOURCES OF MUTUAL RESENTMENT

A. WHY NATIVE INDIANS RESENT NRIS

Native bitterness toward NRIs has both economic and social dimensions. Many Indian entrepreneurs fear the invasion of NRI investment, as such enterprises could threaten their dominance of closed domestic markets or bid up wages through competition for workers. Yet this explanation only accounts for the animosity of Indian businessmen, not even touching the general aversion in India to NRIs. Such sentiment arises from the unique nature of Indian immigration. Unlike most immigrants, including the Chinese, Indians who immigrated to the United States, Canada, and Great Britain were for the most part quite wealthy.¹⁹¹ The unusually high status of the NRI fed the jealousy as native Indians accused NRIs of benefiting from India's best resources and then leaving without a backward glance.

The economic explanation is the simpler and shorter one, it is appropriate to begin there. The issue of timing was earlier discounted as an explanation for Chinese and Indian investment patterns.¹⁹² This explanation suggested that the fortunate coincidence between the Chinese market opening to foreign investors and the Diaspora community accumulating significant sums of assets explained the impressive investment record of the overseas Chinese.¹⁹³ Yet, a different issue of timing did play a key role in Chinese investment. When the Chinese began again to actively court foreign investment in 1979, no private business community functioned in China. Obviously, if such a community already existed in the homeland, natives would be less willing to see Diaspora investment in new ventures that would compete with domestic enterprises. Lord Paul, head of the Caparo Group, an international steel company in Britain, explained the importance of this issue of timing to the *Financial Times*.¹⁹⁴ "[W]hen China reopened its doors to overseas Chinese, there was virtually no significant business community left in the country. In contrast . . . India has a well-established, politically-

191. Compare *supra* notes 56-59 and 61-64 and accompanying text.

192. See *supra* Part II.C.

193. See *id.*

194. See Tassell, *supra* note 39.

connected business community, some of whom had vested interests in opposing the entry of NRIs.¹⁹⁵ From 1959 to 1961, China's Great Leap Forward shattered the nation's economy, leading to food shortages, economic depression and a severe drop in industrial output.¹⁹⁶ The economy slowly improved, but for nearly twenty years, no major reforms were enacted.¹⁹⁷ Until Deng Xiaoping emerged victorious after the power struggle following Mao Tse-tung's death, strict Communist Party doctrine prevailed and no private enterprise existed.¹⁹⁸ Thus, Deng's policy of encouraging foreign investment in China did not anger any indigenous business community—no such community existed.

As Lord Paul suggested, India presents a far different scenario. For decades, the government had promoted the "license raj."¹⁹⁹ Hardly a free market, the system enabled the government to regulate carefully which companies entered which sectors by issuing licenses to certain groups.²⁰⁰ Additionally, reacting to years of colonial control, the government sought to promote self-sufficiency by eschewing foreign trade and investment in favor of domestic production.²⁰¹ As free-market proponents warned, this heavy-handed government involvement led to favoritism and corruption between companies and state officials.²⁰² Protected from the rigors of free-market competition, the licensed companies did not welcome the return of NRI capital when the nation opened its doors to foreign investment in 1991.²⁰³ Since then, they have pressured the government to continue restrictions in the sectors NRIs find most attractive. "They see the NRI investor as a threat and feel their business entities would be bought over [A]ll these are unfounded fears. We are not coming here to buy you out."²⁰⁴ NRIs are seen as a more serious threat than other foreign investors because they have important knowledge of local customs and government regulations. Such insight,

195. *Id.* at 4.

196. See R. KEITH SCHOPPA, *THE COLUMBIA GUIDE TO MODERN CHINESE HISTORY* (2000).

197. See *id.*

198. See Barnathan, *supra* note 13.

199. See JAGDISH N. BHAGWATI, *INDIA IN TRANSITION: FREEING THE ECONOMY* 49-51 (1993).

200. See *id.*

201. See *id.*

202. See *id.*

203. See *Non-Resident Indians Forecast*, *supra* note 154.

204. *Id.*

combined with the excellent education, technical expertise and wealth of many NRI investors, affords overseas Indians the capacity to flourish in the Indian marketplace, and, in the process, perhaps drive out natives who have grown soft after years of government protection.

The second explanation of native antagonism toward NRIs arises from the very nature of NRI immigration. NRIs had significant wealth when they left their homeland. Changes in North American immigration law in the 1960s had profound effects on the economic composition of NRIs. "After 1965 in the United States and after 1967 in Canada, immigration laws were revised to admit Indians in numbers equal to those for people of other countries," writes historian Joan Jensen.²⁰⁵ "The United States law, fully implemented by 1968 . . . gave preferences to highly trained and educated professionals . . . These Indians brought their families, fleeing competition for professional jobs in India . . . Almost a hundred thousand engineers, physicians, scientists, professors, teachers, business people and their dependents had entered the United States by 1975."²⁰⁶ For the most part, those Indians who immigrated were the wealthy, professional class, hardly the "teeming masses" who more commonly live the immigrant story.²⁰⁷

Those Indians left behind did not see NRIs as poor, hard-working souls who bravely set out to find their fortunes abroad. Instead, they rightly see them as those lucky enough to be in the position to gain valuable entry to America.²⁰⁸ And while many NRIs have worked long hours and taken many risks, resident Indians like to point out that most overseas Indians had advantages other Diaspora never had. "Urban, educated, and English-speaking, these [NRI] families experienced a relatively smooth transition from life in India to life in America. The professionals, who were mostly male college graduates between twenty and forty years of age, found well-paid employment in hospitals, corporations, and academic institutions."²⁰⁹ Shekhar Deshpande, an NRI himself, wrote a commentary in *Little India* following a visit to India reflecting the economic disparity immigration has created between NRIs and native Indians and

205. JOAN JENSEN, *PASSAGE FROM INDIA* 280 (1988).

206. *Id.*

207. *See id.*; *supra* notes 56-59 and accompanying text.

208. *See id.*

209. *Id.* at 281.

the bitterness it evokes in the latter.²¹⁰

The NRIs are blessed with more money [than] India by sheer luck. . . . The power of Rs 1000 [rupees] that NRIs have is very casual. They have it without earning it. The inequity in that equation is so terrifying that if it does not occur to some of us, it must be a great human crime. And, if it does occur to us, it also brings an awareness of being complicit somehow in not knowing the full dimension of our pleasure or someone else's pain. Taken together, the reality does not hold up for our human dignity.²¹¹

Though the NRI ingratitude Deshpande described upsets many in India, NRIs' Indian education is the aspect of overseas Indian wealth that most rankles resident Indians. According to the resident view, NRIs have taken the best education India had to offer (university seats that could have been filled by other citizens who planned to remain in India) and escaped as soon as they had the skills and training Western companies sought.²¹² This school of thought argues that such a "brain drain" threatens the future growth of the nation, as India incurs all the expense of training people but none of the benefits.²¹³

The time spent and the expenditure incurred on these persons who do not work in the country are also regarded as a loss to the country. Ironically in the process the richer and more advanced countries get the benefit of training and education imparted by a poorer country to its citizens. They themselves are spared the worry about and expenditure on their own intelligentsia and better people. The advanced nations seem to get the benefit of the learning and training of the Indian emigrants without paying for it.²¹⁴

Though resident fears may exaggerate the problem, statistics show that the brain drain constitutes a serious concern for the Indian government. Between twenty-five percent and thirty percent of graduates from India's prestigious technical institutions leave the country.²¹⁵ Such trends feed native notions that NRIs are mere opportunists: willing to suck India dry of her educational resources, then rush off to a foreign country where newly-acquired skills can better line their pocketbooks.

210. See Shekhar Deshpande, *The 'Bisleri' Factor*, LITTLE INDIA, Sept. 30, 1996, at 50.

211. *Id.*

212. See Luke Harding, *India: The New IT Superpower: With India's Software Exports Set To Reach Usdollars 50 Billion By 2008, Western Companies Are Queuing Up To Be A Part Of The 'Growing' Silicon Valley*, THE GUARDIAN, Oct. 12, 2000, at 12.

213. *See id.*

214. BALASUBRAMANIAN, *supra* note 161, at 25.

215. CLAD, *supra* note 167, at 27.

The Chinese immigrant's story follows a markedly different path. Though a small number of Chinese traders immigrated in the sixteenth and seventeenth centuries, massive Chinese migration did not begin until the 1800s.²¹⁶ By the early nineteenth century, the British looked upon the Chinese as the ideal substitute for African slaves, should the slave trade end.²¹⁷ In 1806, the British initiated the "Chinese Coolie trade" when they brought the first shipment of Chinese laborers to Trinidad.²¹⁸ The Coolie trade served as the main pattern of Chinese immigration until World War I.²¹⁹ Though much has been written about Chinese migrants following the gold rushes in California and Australia, this was not the main impetus for their immigration.²²⁰ Chinese immigration took a bold form with the gold rushes in North America and Australia but did not provide the ultimate pattern of settlement.²²¹ According to Wang Gungwu, the Vice-Chancellor of the University of Hong Kong, the more important circumstance was the Chinese coolie trade. Coolies were laborers used in one era on plantations, while in a later era in building the railroads.²²² With such an impoverished background, overseas Chinese can fairly claim a rags-to-riches story that NRIs cannot. Most importantly, the success of the Chinese cannot be attributed to the training or wealth brought from their homeland. "Though the mass of the Chinese emigrants were labourers, some went in search of trade or turned themselves into traders," writes Pan, outlining the typical Chinese success story. Significantly, "the majority of immigrants sprang from the lowest levels of Chinese society, being impoverished peasants, riff-raff, or worse."²²³ Overseas Chinese struggled in a foreign land, knowing neither the language nor the customs, and made a fortune from nothing. Thus, their native brethren cannot, as native Indians can, charge that overseas Chinese had unfair advantages or dishonestly made use of resources in China.

216. See generally PAN, *supra* note 135.

217. See *id.*

218. See ROGER DANIELS, *ASIAN AMERICA* 10 (1995).

219. See *id.*

220. WANG GUNGWU, *CHINA AND THE CHINESE OVERSEAS* (1991).

221. See *id.*

222. See *id.*

223. PAN, *supra* note 135, at 132.

B. WHY NRIS RESENT THE INDIAN GOVERNMENT

Much of NRI resentment toward the sub-continent results from the treatment received at the hands of the Indian government and its citizens. Thus, the animosity harbored by natives promotes a vicious circle of bitterness reinforced with every act of ill will by either side. Yet, native resentment alone cannot fully explain NRI apathy and neglect of their homeland. Though overseas Chinese might once have been considered traitors to the communist cause, they have always invested their wealth (or, when that was not an option, their expertise) back home.

India's unique history provides an explanation for the behavior of its Diaspora. The nation has long struggled with the bitter legacy of caste.²²⁴ The Indian constitution sought to remedy this legacy with Article 46, which empowered the government to promote the economic and educational interests of the "scheduled castes" and "scheduled tribes," those groups most harmed by the caste system.²²⁵ Affirmative action policies in India received a large boost from the Mandal Commission in 1980,²²⁶ which created new beneficiaries of the reservation system, the "other backward classes," and guaranteed them twenty-seven percent of government jobs, leaving barely half of such jobs outside the realm of the reservation system.²²⁷ The Indian reservation system has received much attention in the current literature, but the system's effect on Indian immigration has not. Many of the well-educated, professional Indians who characterized the flood of immigrants out of the nation in the 1960s were wealthy, high-caste Hindus who felt penalized by the government's extensive reservation system.²²⁸ "The emigrants were mostly the elite—highly educated and capable persons," writes Balasubramanian.²²⁹ "Serious educated unemployment at home, difficulty to get into educational institutions for higher studies, impossibility to get jobs in spite

224. See MARK GALANTER, *COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES OF INDIA* (1984).

225. See INDIA CONST. art. 46.

226. See generally Andre Beteille, *Caste and Politics: Subversion of Public Institutions*, in *RESERVATION CRISIS IN INDIA: LEGAL AND SOCIOLOGICAL STUDY ON MANDAL COMMISSION REPORT* (Vinay Chandra Mishra ed., 1991); MARK GALANTER, *COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA* (1984).

227. See REPORT OF THE MANDAL COMMISSION § 13.11; see also Balaji v. State of Mysore, A.I.R. 1963 S.C. 649 (upholding the quotas).

228. BALASUBRAMANIAN, *supra* note 161.

229. *Id.* at 12.

of high academic and other achievements on account of the government's reservation policy etc., encouraged these persons to go abroad."²³⁰ Brahmins and other high-caste groups, who had once gained all such high-profile positions, saw their opportunities at home rapidly shrinking.

Thus, NRIs left their home with very different feelings than most other immigrants. Once the most favored and admired of citizens, the high-caste groups felt targeted by the government's new policies. Years of wealth and success abroad have not eased the bitterness many NRIs feel toward their homeland. Balasbramanian provides a telling description of the typical NRI's sentiment toward India:

The youngster who left India as a graduate with no prospects of getting a job here or even being given admission for higher studies, does not look back at his having left the country with regret. His mental reservation is greater when he remembers that a job opportunity or admission was denied to him because he belonged to a particular caste or state. . . . He left the country with a challenge—a determination to show people at home that if the mother country does not recognise his abilities or do what he regards as justice by him, a foreign country may. Would such a young man putting in his best abroad against odds and trying to come up in life feel very much obliged to what the mother country has done for him?²³¹

Such NRIs are hardly eager to invest their wealth and talents back into a homeland that has so recently rejected just those contributions. Consequently, NRIs often prefer to express their loyalty to their homeland in more amorphous realms—celebrating aspects of history and culture—instead of contributing to the economy and government of a state whose policies have so recently repelled them.

But the government's reservation policy discourages NRI investment on another level. Not only does it fuel a general sense of bitterness toward the government, the policy also forces NRIs to question the economic future of the nation. Those who oppose affirmative action argue that human resources are not allocated in the best way because educational and occupational opportunities depend more on race (or caste, in the Indian context) than merit.²³² NRIs have the most vivid knowledge of this widespread "economic inefficiency" in India. Bipan Chandra, a famous Indian essayist and journalist, has served as one of the most vocal proponents of the economic argument

230. *Id.*

231. *Id.* at 22.

232. BIPAN CHANDRA, *ESSAYS ON CONTEMPORARY INDIA* (1993).

against the reservation policy.²³³ Because economic growth in the next century will depend heavily on a highly educated labor force, India's reservation policy, a policy that discourages those most highly educated, will shackle the nation's progress.²³⁴

[I]t is precisely at the brain power that the policy of reservations strike, thus pushing us back into the colonial-type or peripheral underdevelopment. At one blow, in the name of equity and the righting of historical wrongs, it sets back instead of pulling us forward. . . . It will openly keep sections of existing brain power out of its needed places. It marginalizes those who want to develop their brain power and instead glorifies muscle and nerves activities. It openly proclaims that power to make decisions is to be put in the hands of those who are far less qualified than others to exercise it. Can there [sic] be a better recipe for economic disaster and for achievement of underdevelopment?²³⁵

Additionally, Chandra argues, reservations lead to a "brain drain," an economic disadvantage of which NRIs are more aware than anyone else (after all, their own departures are evidence of this process at work).²³⁶ For these reasons, NRIs are more apt to question the long-term economic viability of India than other investors—who are not so personally aware of the nation's reservation policy.

V. CONCLUSION

This Article has examined the incongruity of the difference between NRI investment in India and overseas Chinese investment in China. While a theory of mutual resentment partially explains this puzzle, further research is necessary to completely account for this trend. Several alternative theories should be explored. First, though many studies have established that the average level of wealth of both Diaspora is very high, there is no measurement of the variability of this wealth. Perhaps NRIs more commonly earn a comfortable but moderate professional income as compared to the overseas Chinese, who might tend to be either millionaires or poor laborers. Such a moderate professional income would rarely provide the capital necessary for initiating joint ventures in a foreign nation. Second, though this Article has sought to establish that an "entrepreneurial spirit" is present in the overseas Indian, it left

233. *See id.*

234. *See id.*

235. *Id.* at 69.

236. *See id.*

unexamined the possible distinctions between the *types* of enterprises favored by overseas Chinese versus those favored by overseas Indians. Perhaps those of the overseas Chinese better lend themselves to export back to the homeland. This is doubtful, as one could imagine. Nevertheless, this explanation warrants further pursuit. Finally, the loyalty of East Asian and Chinese investors will be tested in the coming years and any deviations from past performance should be closely monitored. Will Diaspora investment remain healthy in spite of the "Asian flu" that has rocked the stock markets of the Tiger economies?

If a complex cycle of resentment between overseas and native Indians explains the lack of NRI investment in India, there may be little hope for the future. Native resentment of NRIs encourages many of the nation's policies that in turn most incite NRI anger, such as the bans on dual citizenship and NRI participation in Indian elections, as well as restrictions on NRI investment in key sectors of the Indian economy. These policies, coupled with deep-seeded bitterness over the reservation policy, discourage NRI investment, thus fueling native anger at NRI disloyalty and reinforcing the vicious circle. If indeed this dynamic is a primary factor, and if Diaspora investment is an integral part of the Asian miracle—as the post-World War II performance of China and the Tigers suggests—then Indians should not set their economic hopes too high.

Is this forecast overly pessimistic? Perhaps sentiment on both sides of this unfortunate relationship will change with time, and more support and cooperation will develop between resident and overseas Indians. But, old hatreds die hard; India might do better to pin its hopes upon the next generation of NRIs. An unanswered question is whether the resentment that exists today between overseas and resident Indians will poison the next generation of each faction against one another. Though the adults in Consul Bhasin's Manhattan audience may have bristled when he pointed to their low levels of investment back home, twenty years from now, will the children in the crowd remember his plea? Certainly, they will not harbor personal memories of the opportunities denied to their parents by the government's reservation policy. And the next generation of resident Indians cannot accuse these NRI children of exploiting Indian universities. Even if a new sense of brotherhood does not emerge between the next generation of NRIs and resident Indians, there is still hope for stronger economic ties. India needs the wealth and talents of its Diaspora if it is to join the

ranks of the world's elite economies. NRIs are uniquely positioned to invest back in their homeland, currently one of the most promising markets in the world. Perhaps regard for the bottom line will shadow old slights for the next generation of resident and overseas Indians, and the wayward children will return home.

